



Federal Communications Commission  
Washington, D.C. 20554

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DA 12-1141  
In Reply Refer to:  
1800B3-AJR

Bryan Broadcasting Corporation  
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In re: **KWBC(AM), Navasota, Texas**  
Facility ID No. 40912  
File No. BP-20100712ABU

**Petition for Reconsideration and  
Reinstatement**

Dear Counsel:

We have before us a January 9, 2012, "Petition for Reconsideration and Reinstatement *Nunc Pro Tunc*" (the "Petition") filed by Bryan Broadcasting Corporation ("Bryan Broadcasting"), licensee of Station KWBC(AM), Navasota, Texas (the "Station") of the staff's December 6, 2011, action<sup>1</sup> dismissing the referenced application<sup>2</sup> (the "2010 Application") to change the Station's community of license from Navasota to College Station, Texas. For the reasons discussed below, we reinstate the 2010 Application, grant in part the Petition, and dismiss the Application.

**Background.** Initially, in AM Auction 84, the staff granted a major modification application<sup>3</sup> filed by the former licensee of Station KWBC(AM)<sup>4</sup> and issued a construction permit (the "2007 Permit"), changing its community of license from Navasota, a small community not located in any Urbanized Area, to College Station, which is one of two central cities of the College Station-Bryan, Texas, Urbanized Area. The 2007 Permit also authorized Station KWBC(AM) to relocate its transmitter site and increase greatly its coverage area. Despite its efforts, Bryan Broadcasting was unable to construct the modified facilities before the expiration of the 2007 Permit on July 11, 2010.<sup>5</sup> In order to complete construction, Bryan

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<sup>1</sup> Letter to Brendan Holland, Esq., Reference 1800B3-JS (MB Dec. 6, 2011) (the "Dismissal Letter").

<sup>2</sup> See File No. BP-20100712ABU. Notice of the dismissal of this application was given by *Public Notice*, Report No. 47630 (Dec. 9, 2011).

<sup>3</sup> See File No. BMJP-20051031ACD (the "2005 Application"). The application was granted on July 11, 2007. See *Public Notice*, Report No. 46528 (Jul. 16, 2007).

<sup>4</sup> On July 31, 2007, the staff granted an assignment of license application for Station KWBC(AM) from the RAFTT Corporation to Bryan Broadcasting, and the transaction was consummated on August 1, 2007. See File No. BAL-20060405ACK. The assignment was conditioned on the assignor obtaining a community of license change from Navasota to College Station.

<sup>5</sup> See Bryan Broadcasting's Petition, at 5-6.

Broadcasting filed on July 12, 2010, the 2010 Application, seeking authority for the previously authorized facilities for Station KWBC(AM), including the change of community of license from Navasota to College Station and the relocation of the Station's transmitter site.<sup>6</sup> On August 3, 2011, the staff sent a letter to Bryan Broadcasting, requesting an amendment to resolve a potential conflict with a Mexican allotment.<sup>7</sup> On September 1, 2011, Bryan Broadcasting submitted an amendment to address this deficiency.<sup>8</sup>

While the 2010 Application was pending, the Commission revised its policies in cases like this one, requiring greater scrutiny when a station is moving from a rural community to a community located in or near an Urbanized Area and de-emphasizing raw population totals in comparing the gain and loss areas of service.<sup>9</sup> The new policy generally applies to any application pending on March 3, 2011, the effective date of *Rural Radio*.<sup>10</sup>

On December 6, 2011, the staff dismissed the 2010 Application, stating that it could not make the requisite finding that the 2010 Application would result in a preferential arrangement of allotments under the FM allotment priorities.<sup>11</sup> Specifically, the staff determined, under Priority 4, that the retention of a second local service to Navasota (population 7,049) outweighs the provision of a seventh local service at College Station (population 93,857).<sup>12</sup> Although the *Dismissal Letter* recognized that the 2010 Application would provide a net gain in reception service to 197,789 persons, it noted the gain and loss areas are well served with five or more full-time reception services and that *Rural Radio* de-emphasized raw population totals under Priority 4.<sup>13</sup> Accordingly, the staff dismissed the 2010 Application.

In its Petition, Bryan Broadcasting contends that the dismissal of the 2010 Application was in error in three respects. First, Bryan Broadcasting asserts that it was not afforded an opportunity to amend the 2010 Application following the adoption of *Rural Radio* as other similarly situated applicants were

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<sup>6</sup> Although the 2005 Application was granted as a major modification filed in an AM auction window, the 2010 Application was filed as a minor modification due to changes in the Commission's rules for processing community of license changes. See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 112 (2006), *petitions for reconsideration pending* (permitting AM stations to file minor change applications to change their communities of license).

<sup>7</sup> *Letter to Brendan Holland, Esq.*, Reference 1800B2-JBS (MB Aug. 3, 2011) ("*Deficiency Letter*").

<sup>8</sup> See File No. BP-20100712ABU, Amendment of September 1, 2011, Exhibit 1.

<sup>9</sup> See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, 26 FCC Rcd 2556 (2011), *petitions for reconsideration pending* ("*Rural Radio*").

<sup>10</sup> See *Rural Radio*, 25 FCC Rcd at 2576, ¶ 30, and at 2578, ¶ 39. However, for equitable reasons, the new policies do not apply to applications for new AM stations or major changes in AM facilities filed in the 2004 AM Auction 84. See *Id.*, at 2575, ¶ 33.

<sup>11</sup> *Dismissal Letter* at 2. The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. See *Revision of Assignment Policies and Procedures*, Second Report and Order, 90 FCC 28 88 (1982) ("*1982 Revision*").

<sup>12</sup> *Dismissal Letter* at 2.

<sup>13</sup> *Id.*

permitted to do and that this disparate treatment is not permitted under Commission precedent or the Administrative Procedure Act.<sup>14</sup> Second, Bryan Broadcasting argues that the 2010 Application should be grandfathered under the Commission's previous Section 307(b) standards based on various equitable considerations.<sup>15</sup> Third, Bryan Broadcasting alleges that the staff improperly concluded that the 2010 Application would not result in a preferential arrangement of allotments because it relied entirely on the difference in the number of transmission services in Navasota and College Station and did not appropriately consider other factors such as a net gain in reception service to 200,000 listeners, a net gain of 100 people who will receive either a fourth or fifth reception service, and the economic size and growth of the two communities. Accordingly, Bryan Broadcasting requests that the 2010 Application be reinstated *nunc pro tunc* and granted.

**Discussion.** Reconsideration is warranted only when a petitioner shows a material error in the Commission's original order or raises additional facts not known or existing at the time of petitioner's last opportunity to present such matters.<sup>16</sup> We believe that Bryan Broadcasting has met this burden with respect to one issue but has not done so with respect to the remaining issues.

*Disparate Treatment.* It is well established that that similarly situated parties may not be treated in a disparate manner without an adequate reasoned explanation.<sup>17</sup> An agency must do more than enumerate factual differences but must explain the relevance of those differences to the disparate treatment.<sup>18</sup> Although Bryan Broadcasting was sent a *Deficiency Letter*, we agree that it should have been afforded an opportunity to amend its Section 307(b) showing in view of the adoption of *Rural Radio*. Numerous other similarly situated parties, whose applications were pending on or after the effective date of *Rural Radio*, were sent letters, requesting amendments to their Section 307(b) showings to comply with the revised policies.<sup>19</sup> The *Dismissal Letter* did not acknowledge these contemporaneous cases or attempt to explain a reason for this disparate treatment. Accordingly, we will reinstate the 2010 Application *nunc pro tunc*.

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<sup>14</sup> See Bryan Broadcasting's Petition, at 16-18. Simultaneously with the filing of its Petition, Bryan Broadcasting submitted an amendment to the 2010 Application, seeking to provide additional support for its Section 307(b) showing. See File No. BP-20100712ABU, Amendment of January 9, 2012, Exhibit 20.

<sup>15</sup> Specifically, Bryan Broadcasting states that these equitable factors are (1) the 2010 Application essentially seeks to reinstate the 2007 Permit and should be subject to the same grandfathering provisions as apply major change applications that were filed in the 2004 AM auction window and which remain pending; (2) nearly \$475,000 has been spent by Bryan Broadcasting on the acquisition of the Station and expenditures relating to the facility relocation; and (3) it relied upon the advice and guidance of the staff in reapplying for the Station KWBC(AM) city of license modification. See Bryan Broadcasting's Petition at 18-21.

<sup>16</sup> See 47 C.F.R. § 1.106; *WWIZ, Inc.*, 37 FCC 685, 686 (1984), *aff'd sub nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); and *Eagle Broadcasting Co. v. FCC*, 514 F.2d 852 (D.C. Cir. 1975).

<sup>17</sup> See *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965) ("*Melody Music*"); *Public Media Center v. FCC*, 587 F.2d 1322, 1331 (D.C. Cir. 1978); *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361,366 (D.C. Cir. 1987).

<sup>18</sup> See *Melody Music*, 345 F.2d at 732.

<sup>19</sup> See, e.g., *Truth Broadcasting Corp.*, Letter, 27 FCC Rcd 169 (MB 2012); *Sunnylands Broadcasting LLC, et al.*, Letter, DA-12640 (released Apr. 26, 2012), 2012 WL 1454058. Numerous unpublished letters were also to applicants, affording them the opportunity to amend their Section 307(b) showings. See, e.g., *Letter to Karen A. Ross*, Reference 1800B3-RFS (Aug. 25, 2011), File No. BMPED-20110302ACD; *Letter to Sonya Hall Harris, Esq.*, Reference 1800B3-RFS (Aug. 25, 2011), File No. BPH-20110301ABN; *Letter to Jeffrey L. Timmons, Esq.*,

*Request for Grandfathering.* Next, we consider Bryan Broadcasting’s argument that the 2010 Application should be grandfathered under our pre-*Rural Radio* policies. Bryan Broadcasting is in effect requesting waiver of the application of the *Rural Radio* policies to the 2010 Application even though it was pending on the effective date of *Rural Radio* and subject to those new policies.

The Commission’s policies or rules may be waived only for good cause shown.<sup>20</sup> An applicant seeking a waiver has the burden to plead with particularity the facts and circumstances that warrant such action.<sup>21</sup> The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”<sup>22</sup> and must support its waiver request with a compelling showing.<sup>23</sup> The Commission may exercise its discretion to waive a policy or rule where the particular facts make strict compliance inconsistent with the public interest.<sup>24</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>25</sup> However, waiver of the Commission’s policies or rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>26</sup>

We find that the equitable concerns raised by Bryan Broadcasting do not meet this burden. First, Bryan Broadcasting contends that the 2010 Application should be processed under the former procedures that were used to process the major change applications filed during the 2004 AM auction because it essentially seeks to reinstate a permit granted during that auction. This argument is not persuasive. The expiration of an AM station construction permit extinguishes all rights to construct and operate the specified facilities. It is simply incorrect to characterize the 2010 Application as an application to “reinstate” an expired permit. Rather, the 2010 Application is subject to the rules and processing policies that are effect at the time that action is taken on this particular application. We reject, as fundamentally inconsistent with our most basic facility licensing policies that any equitable considerations apply to an applicant that files a “successor” application specifying facilities in an expired AM construction permit. For these same reasons we reject the argument that we should waive our processing policy based on Bryan Broadcasting’s construction and installation efforts. We note that the 2010 Application proposes to co-locate with the licensed (and previously constructed) facilities of KZNE(AM). Bryan Broadcasting failed to timely complete construction of the equipment necessary to commence diplexed transmissions – including a phasing system and filtering – as specified on the Special Operating Conditions on the 2007 Permit. It has

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Reference 1800B3 (Aug. 30, 2011), File No. BPH-20070119AEI; and *Letter to Lawrence Bernstein, Esq.*, Reference 1800B3-RFS (Aug. 25, 2011), File No. BPH-20090121AAL.

<sup>20</sup> 47 C.F.R. § 1.3.

<sup>21</sup> See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987).

<sup>22</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d.*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) (“*WAIT Radio*”). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

<sup>23</sup> *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

<sup>24</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>25</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>26</sup> *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

also failed to explain why its inability to timely complete construction was based on circumstances beyond its control.

In addition, we find that Bryan's request to broaden the class of Auction 84-related applications that should be processed under former processing policies is a general policy issue that is more properly raised in a Petition for Reconsideration<sup>27</sup> in the *Rural Radio* proceeding rather than as an equitable ground for a waiver.<sup>28</sup> Although the Commission could have extended its grandfathering of AM applications filed during Auction 84 to situations where parties filed "successor" applications specifying the same facilities as those authorized in an expired Auction 84 construction permit, it did not do so. The Commission concluded that a grandfathering exception was warranted only for applications that remained pending from the 2004 window. It reasoned that it was likely that these applicants had invested considerable resources on prosecuting their applications, exploring technical and settlement options, etc.<sup>29</sup> Those considerations are not present here. It is also the case that the 2010 Application, unlike the Auction 84 submissions, was filed after the 2009 release of the *Rural Radio* notice of proposed rule making.<sup>30</sup> Thus, Bryan Broadcasting had full notice that the 2010 Application could be subject to a new processing standard.

We find particularly unpersuasive Bryan Broadcasting's argument that a waiver is warranted due to funds it expending in acquiring the Station. *Rural Radio* did not affect in any way the KWBC(AM) license or Bryan Broadcasting's authority to timely construct and commence operations as specified in the 2007 Permit. In acquiring a station with an outstanding construction permit Bryan Broadcasting assumed the risk that it would be able to complete construction by the 2007 Permit's construction deadline, a deadline that was subject to the Commission strict timely construction policy. Finally, Bryan Broadcasting's allegation that it relied upon informal staff advice in reapplying for the Station KWBC(AM) license modification does not warrant waiving application of the *Rural Radio* policies because it is well settled that informal staff advice is not authoritative and that a licensee assumes the risk of relying on such advice.<sup>31</sup>

*Preferential Arrangement of Allotments.* Finally, we examine Bryan Broadcasting's amended Section 307(b) showing *de novo* to determine whether it would result in a preferential arrangement of

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<sup>27</sup> Although Bryan Broadcasting did not file such a petition for reconsideration, it participated in a joint opposition to petition for reconsideration which, in part, questioned the scope of the grandfathering provision. *See Opposition to Petition for Reconsideration of Educational Media Foundation and Bryan Broadcasting Corporation*, MB Docket 09-52 (filed Jan. 5, 2012).

<sup>28</sup> *See Adelphi Communications Corporation and Time-Warner Cable, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8288, ¶ 192 (2006) (finding that some of the concerns regarding a proposed transfer of control are not transaction-specific and are more appropriately addressed in other pending rule making proceedings); *Birmingham Christian Radio, Inc. and Radio South Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 7909, 7915, ¶ 19 (determining that a party's generalized arguments challenging an interim policy on defining the relevant product market are more appropriately addressed in the context of the local ownership rule making proceeding); *Sunburst Media LP and Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 1366, 1368, ¶ 6 (2002) (concluding that a party's request to change our policy with respect to network affiliation agreements is more appropriately addressed in a rule making proceeding).

<sup>29</sup> *See Rural Radio*, 26 FCC Rcd at 2575, ¶ 33.

<sup>30</sup> *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, 24 FCC Rcd 5239 (2009).

<sup>31</sup> *See, e.g., Malkan FM Associates v. FCC*, 935 F.2d 1313, 1319 (D.C. Cir. 1991); *David D. Oxenford, Esq.*, Letter, 26 FCC Rcd 392, 397 (MB 2011); *State of Oregon*, Memorandum Opinion and Order, 11 FCC Rcd 1843 (1996)..

allotments. At the outset, the *Deficiency Letter* properly determined that both the existing and proposed arrangement of allotments should be compared under Priority 4 because the higher allotment priorities do not apply.<sup>32</sup> The *Deficiency Letter* also recognized that, under Priority 4, the Commission traditionally considers various factors such as “the number of aural reception services received in the proposed service area, the number of local transmission services, the need for or lack of public radio service and other matters such as the relative size of the proposed communities.”<sup>33</sup> Recently, the Commission added some additional factors under Priority 4.<sup>34</sup> Of the various factors, we find that two are most relevant in this case.

First, we believe that a comparison of the number of transmission services strongly favors retention of the Station in Navasota. Although the *Dismissal Letter* found that retention of a second transmission service at Navasota is preferred over the provision of a seventh transmission service to College Station, the appropriate comparison should be the retention of a second local service at Navasota versus the allotment of a twelfth transmission service to the College Station-Bryan Urbanized Area because, under our revised policies, a move to a community located within an Urbanized Area is considered to be an additional transmission service to the Urbanized Area rather than a transmission service to the particular community.<sup>35</sup> Viewed in this light, the retention of a second transmission and a first commercial service to a community of 7,049 persons is favored over a twelfth transmission service to the College Station-Bryan Urbanized Area.<sup>36</sup>

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<sup>32</sup> *Dismissal Letter*, at 2.

<sup>33</sup> *1982 Revision*, 88 FCC 2d at 92 n.8.

<sup>34</sup> These new factors include, *inter alia*, (1) requiring applicants to show not only the size of the populations gaining and losing service but also the numbers of services those persons would receive if the proposal were granted; (2) strongly disfavoring any change that would result in the net loss of third, fourth, or fifth reception service to more than 15 percent of the population in the station’s current protected contour; (3) strongly disfavoring any proposed removal of a second local transmission service from a community with a population of 7,500 or greater; or (4) any other changes in circumstances relevant to our consideration. See *Rural Radio*, 26 FCC Rcd at 2578-79, ¶ 39.

<sup>35</sup> *Id.*, at 2567, ¶ 20 (adopting a rebuttable presumption “that, when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for Section 307(b) purposes, as proposing service to the entire urbanized area rather than the named community of license”). See also *Gearhart, Madras, et al.*, Report and Order, 26 FCC Rcd 10259 (MB 2011) (determining that the appropriate comparison under Priority 4 for a proposed modification of a station’s license between two communities within the same urbanized area is from which community would the station be able to better serve the urbanized area rather than examining the transmission service needs of the two communities).

<sup>36</sup> See *Dismissal Letter*, at 2, citing *Sumter, Orangeburg, and Columbia, South Carolina*, Report and Order, 11 FCC Rcd 6376 (MMB 1996) (finding that retention of sixth transmission service at a smaller community outweighed fourteenth transmission service at a larger community); and *Metropolis, Illinois, and Paducah, Kentucky*, Report and Order, 15 FCC Rcd 11714, 11715 (MMB 2000) (determining that retention of third transmission service at a smaller community outweighed sixth transmission service at a larger community). Bryan Broadcasting claims that those cases are inapposite to the present situation because they did not involve a change of transmitter site or an improvement in the station’s coverage. See Bryan Broadcasting’s Petition at 11. We disagree. We have reached similar results under Priority 4 where the proposed reallocations would provide a net gain of service. See, e.g., *Royston and Commerce, Georgia*, Report and Order, 15 FCC Rcd 5676 (MMB 2000); *Bay Springs, Ellisville, and Sandersville, Mississippi*, Report and Order, 14 FCC Rcd 21339 (MMB 1999).

Second, the net gain in service to approximately 212,000 persons<sup>37</sup> resulting from the proposal and a comparison of the number of reception services in the gain and loss areas support reallocation of the Station to the College Station-Bryan Urbanized Area. Although the gain and loss areas are generally well served as they have more than five reception services,<sup>38</sup> Bryan Broadcasting claims that, in relative terms, the gain area needs the additional service more than the loss area because the gain area has fewer services. Specifically, Bryan Broadcasting alleges that the loss area will continue to receive service from a minimum of 17 radio stations. By way of contrast, Bryan Broadcasting claims that “[t]he improvement of KWBC will bring service to more people who currently receive less than 10 services than are in the entire loss area.”<sup>39</sup>

Overall, we find that, on balance, the substantial disparity in the number of transmission services between Navasota and the College Station-Bryan Urbanized Area is controlling and that the public interest would be better served by retaining Station KWBC(AM) as a second transmission service and a first commercial service to Navasota than reallocating it as a twelfth transmission service to the College Station-Bryan Urbanized Area. Although the proposed reallocation would result in a net gain of service to approximately 212,000 people, we do not find this to be as significant a factor because both the gain and loss areas are extremely well served as they have well in excess of five reception services that the Commission has deemed to be “well served.” Further, it is important to consider that this case involves a proposed “move-in” to an urbanized area and that our revised Section 307(b) policies under *Rural Radio* are intended to “achieve a balance between distribution of radio service to the largest populations on the one hand and distribution of new service to those most in need of it on the other.” Under these circumstances, if we were to approve this type of reallocation, we would be allowing a move-in to an urbanized area based on a net gain of service to well served populations, who in relative terms, have fewer services than other well served populations. Such a result would be antithetical to the service goals which *Rural Radio* is intended to promote. Finally, while there are some other factors mentioned by Bryan Broadcasting, we do not believe that they overcome the importance of the factors supporting the existing arrangement of allotments.<sup>40</sup> Accordingly, we conclude that retention of Station KWBC(AM) at Navasota would better serve the public interest than its reallocation to the College Station-Bryan Urbanized Area.

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<sup>37</sup> Specifically, a staff engineering analysis reveals that the proposal would result in a gain of service to 239,848 persons, and a loss of service to 27,461 persons, for a net gain of 212,387 persons. While Bryan Broadcasting’s figures are different from the staff’s analysis, they show a net increase of approximately 200,000 persons.

<sup>38</sup> According to Bryan Broadcasting’s engineering study, there would be a net gain of over 100 persons who would receive either a fourth or fifth reception service, while a staff engineering analysis reveals that there would be a net loss of 114 persons who would receive a fourth or fifth service. However, whether there is a net gain or loss of third, fourth, or fifth reception services to 100 or 114 persons is not decisionally significant in this case because these figures are well below 15 percent of the population in the existing protected contour. *See Rural Radio*, 26 FCC Rcd at 2577.

<sup>39</sup> Bryan Broadcasting’s Petition, at 12-13. To further support this position, Bryan Broadcasting submitted an engineering study, calculating the Service Value Index (“SVI”) for the gain and loss areas and showing that the SVI for the gain area is nearly 46 times as the SVI for the loss area. Specifically, Bryan Broadcasting claims that the SVI for the gain area is 9,667, and the SVI for the loss area is 211. *Id.*

<sup>40</sup> Specifically, Bryan Broadcasting states that between 2000 and 2010, the populations for Navasota and College Station grew by approximately 4 percent and 38 percent respectively and that in the past eight years, annual gross retail sales increased by 50 percent in College Station and declined by 20 percent in Navasota but did not provide population and economic growth information comparing Navasota and the College Station-Bryan, Texas, Urbanized Area. Additionally, while Bryan Broadcasting contends that Navasota cannot support two local stations, this allegation is based upon the opinion of one of its principals and is not supported. *See* Bryan Broadcasting’s Petition at 15.

**Conclusion.** Accordingly, for the reasons set forth above, the “Petition for Reconsideration and Reinstatement *Nunc Pro Tunc*” filed by Bryan Broadcasting Corporation IS GRANTED IN PART, and in all other respects IS DENIED. Further, the application (File No. BP-20100712ABU) filed by Bryan Broadcasting Corporation IS DISMISSED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau